



WISCONSIN STATE REPRESENTATIVE  
**Louis J. Molepske, Jr.**  
71ST ASSEMBLY DISTRICT

**Assembly Bill 114**  
**The Open Burning Education and Enforcement Act**

**I. Background:**

- A. It is currently illegal to burn solid waste such as insulation, plastics, tar paper, used oils and other wastes that we send to our area landfills. Although Wisconsin has a long history of open burning, land fills remain the safest option for the disposal of waste.
- B. Open burning is the leading cause of air pollution and wildfires in Wisconsin.
  - i. A 1994 study by the United States Environmental Protection Agency showed that each pound of garbage burned in a burn barrel emits twice as many furans (a harmful organic compound), twenty times more dioxin and forty times more particulates than if that same pound of garbage were burned in an incinerator with air pollution controls.
  - ii. The increase of plastics in our waste stream has made open burning even more harmful to humans.
  - iii. In Minnesota, it was estimated that 35% of all wildfires were started by open burning.
- C. Open burning is also the largest source of dioxins in Wisconsin (accounting for roughly 19% of all dioxins released into the atmosphere).
  - i. Dioxin, a toxic compound, originates from the burning of trash, wood and other substances.
  - ii. The compound can cause health problems in humans when it settles on our feed crops, where it can then be consumed and stored in the fat of livestock animals and eventually ingested by humans through red meat and milk consumption.
  - iii. Dioxin is also problematic for humans due to the fact that it can be inhaled through the air that we breathe. Amongst other health risks for humans, dioxin can be a carcinogen; can affect breathing; can cause developmental abnormalities in the enamel of children's teeth; can cause central and peripheral nervous system pathology; can cause thyroid disorders; can cause damage to the immune system; and can lead to diabetes.

- D. Open burning is the number one source of citizen complaints to the Department of Natural Resources on air pollution matters.

## II. Current Law-Wisconsin Statutes Section 285.11

- A. Under Wisconsin Statute § 285.11, the Department of Natural Resources was given the authority to promulgate rules pertaining to air pollution.
- i. NR 429 (see attached): Defines "open burning" as "oxidation from which the products of combustion are emitted directly into the ambient air without passing through a stack or chimney."
    - a. NR 429 prohibits open burning (with twelve exceptions).
  - ii. NR 502.11 (see attached): Establishes open burning requirements for wood-burning facilities.
- B. In addition, a number of communities across the state have adopted ordinances banning open burning. However, these ordinances have no uniform standard, and patchwork ordinances often lead to confusion and ineffective enforcement.
- C. Enforcement of ordinance violations rests with local sheriff's departments, which are often unable to dedicate their limited resources to policing open burning.
- D. In communities that lack open burning ordinances, the only mechanism for enforcement is through court action by the Department of Justice, which only has the resources to prosecute the most egregious violations.

## III. Assembly Bill 114

- A. This bill authorizes the Department of Natural Resources and local law enforcement officials to **issue citations** for violations of laws or ordinances regarding the burning of solid waste. *In other words, the bill changes how we **ENFORCE** previously existing state law regarding open burning, not the laws themselves.* Local sheriffs and town chairpersons would retain their ability to enforce open burning laws.
- i. Under current law, the Department of Natural Resources already issues citations, similar to traffic tickets, for violations of certain laws, including, those regulating hunting, fishing and littering.
- B. As open burning is so common in Wisconsin, we understand that many citizens are not aware it is illegal, or of its harmful effects on humans and livestock. With that idea in mind, under the bill, the DNR will not issue any forfeiture for the first year after the bill becomes law. After the first year, all first time violators will receive a maximum penalty of \$5. Subsequent violations would be subject to a maximum forfeiture of \$500.
- C. The bill also includes a provision which authorizes the DNR to issue a citation to a person who operates a solid waste facility at which waste tires are stored. In 2005, a massive tire fire in Shields, Wisconsin could have been averted if a

citation process had been in place for tire storage. Because of the toxicity of the smoke from this fire, residents in and around Shields and Watertown were advised to keep their windows and doors closed to avoid circulating any outside air into their homes and businesses. In all, the resources of 106 fire departments, 920 firefighters, from 10 counties fought the blaze and it took those crews five days to extinguish the fire. The total cost to fight the fire for the Town of Shields was well over \$1 million.

- i. Pursuant to Wis. Stat., § 289.96(3)(a), a violation of this section carries with it a minimum forfeiture of \$10 and a maximum fine of \$5,000 for each violation. Each day of continued violation is considered a separate offense.

- a. The Watertown Recycling Plant was licensed to hold 200,000 tires, but at the time of the fire there were over 1,000,000 tires on hand.

- D. It is vital that we take the common sense measures necessary to maintain the pristine quality of our air and protect Wisconsin's vibrant ecosystem for future generations. Wisconsinites need to know about this law and the law needs to have an effective enforcement mechanism. We believe that this bill meets that that need head on, yet at the same time is not overly harsh to inadvertent or first time offenders.

- E. As you may know, this bill has been passed by its assigned committees in both the Assembly and the Senate the last two sessions. Unfortunately, due to time constraints, neither bill made it before the full legislative body for a vote.

Respectfully submitted,

Louis Molepske, Jr.  
State Representative  
71<sup>st</sup> Assembly District

# Midwest Environmental ADVOCATES

## Testimony of Midwest Environmental Advocates To the Assembly Committee on Natural Resources

2009 Assembly Bill 114

March 10, 2009

Dear Chairperson Black and Honorable Members of the Committee,

Thank you for the opportunity to address the committee regarding Assembly Bill 114, concerning the Department of Natural Resources' authority to issue citations for violations of laws or licenses regulating the open burning of solid waste.

Midwest Environmental Advocates, Inc. is a nonprofit environmental law center that works for clean air, clean water and clean government. Over the past ten years of our work, we have come to believe that the Department of Natural Resources' lack of enforcement capabilities, both in the form of issuing citations and prosecuting offenders, limits the Department's ability to protect and preserve our state's natural resources. When the Department must refer violations, through the Secretary's office, to the Department of Justice for prosecution, many political factors interfere with the effective and efficient enforcement of environmental law.

Assembly Bill 114 provides DNR with the authority to issue citations under their own authority for violations to laws established to protect the air and public health, laws that the DNR has the expertise and experience to enforce. We have heard, over the years, from many citizens regarding their frustrations with the DNR's inability to address their concerns about particulate matter and odor from open burning sources. Wisconsin citizens will now be able to contact DNR and expect the agency to enforce air quality and air protection laws – laws that, by statute, fall under its purview.

MEA supports legislation like AB114 that provides the Department of Natural Resources with the independence and authority it needs to protect Wisconsin's natural resources for future generations. The DNR must be given the authority to enforce environmental laws in its own agency. The integrity of Wisconsin's natural resources is too important to leave vulnerable to political influence and inefficient protections.

Thank you for the opportunity to testify today in support of Assembly Bill 114.



Wisconsin Environmental Health Association, Incorporated



March 5, 2009

Rep. Spencer Black  
Chair, Committee on Natural Resources  
Room 210N  
State Capitol  
PO Box 8952  
Madison, WI 53708

RE: AB 114

Dear Representative Black,

Air pollution from open burning of trash causes serious health problems and damages the environment. That's why we need effective state regulations to control and enforce air pollution caused by open burning. AB 114 is a good start.

Seven to nine percent of what is burned ends up as air pollution, and many pollutants are highly toxic. These pollutants include particulate matter, dioxin, heavy metals and arsenic just to name a few. Many trash items contain low levels of chlorine that when burned release dioxins to the atmosphere where they persist in the environment for years.

The smoke from open fires poses a serious health hazard, especially to those Wisconsin residents with existing respiratory illness.

The 350 members of the Wisconsin Environmental Health Association strongly support AB 114. WEHA has hosted the Air Defenders project for many years on our website to teach children about the hazard of open burning. To learn more about our WEHA and environmental health, please visit our website at [www.weha.net](http://www.weha.net). We are committed to protecting the health of the people of Wisconsin now and in the future.

Sincerely,

Christopher Hinz, President  
Wisconsin Environmental Health Association



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County of La Crosse, Wisconsin*

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**Public Health**  
Prevent. Promote. Protect.

March 9, 2009

Rep. Spencer Black  
Chair, Committee on Natural Resources  
Room 210N  
State Capitol  
PO Box 8952  
Madison, WI 53708

Dear Representative Black,

I am writing to you in support of AB 114. La Crosse County Health Department receives a number of open burning complaints from our residents each year and they are concerned about the health consequences of this exposure. Much of our solid waste contains products and packaging that should not be burned. In La Crosse County, our taxpayers spend considerable resources to operate the Excel Energy RDF plant in La Crosse in an environmentally safe manner. This plant burns much of the solid waste generated in a multi-county region. Millions of dollars have been spent to remove dioxins from emissions. These expenditures are ineffective when the surrounding rural areas of Wisconsin send up dioxins through open burning.

AB 114 finally gives the DNR the authority to investigate and regulate this serious health hazard. I hope you and the Committee on Natural Resources will take the necessary steps to protect the people of Wisconsin.

Sincerely,

Douglas Mormann, Director  
La Crosse County Health Dept.

cc: Rep. Huebsch  
Rep. Shilling  
Sen. Kapanke